

RENDERED: NOVEMBER 18, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001378-MR

ARTHUR D. MARCUM AND
AMY MARCUM

APPELLANTS

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NOS. 05-CI-00238 AND 07-CI-00465

CARTER COUNTY, KENTUCKY,
BY AND THROUGH THE FISCAL COURT

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: COMBS, STUMBO AND WINE, JUDGES.

STUMBO, JUDGE: Arthur D. Marcum and Amy Marcum appeal from an order of the Carter Circuit Court affirming a ruling of the Carter County Fiscal Court. The circuit court determined that evidence existed in the record to support the Fiscal Court's determination that a roadway at issue extended approximately 0.4 miles past a gate which the Marcums had erected. The Marcums contend that the Fiscal

Court's action was arbitrary, and that the circuit court erred in failing to so rule. We conclude that the circuit court properly determined that substantial evidence existed to support the Fiscal Court's decision, and accordingly we affirm the order on appeal.

On July 14, 2005, the Marcums filed a complaint in Carter Circuit Court seeking the review of a July 12, 2005 decision of the Carter County Fiscal Court. That decision determined in relevant part that a county roadway called Wicker Hollow Road had a length of 1.4 miles as measured from the center of road US 60. The decision affected the Marcums because they, or their predecessors in interest, erected a gate on the roadway (or in their view, at the end of the roadway), which measured approximately 1.0 miles from the center of US 60. The Fiscal Court responded with a motion to hold the matter in abeyance until such time as an evidentiary hearing was conducted by the Fiscal Court in accordance with *Trimble Fiscal Court v. Snyder*, 866 S.W.2d 124 (Ky. App. 1993).

After a hearing was conducted by the Fiscal Court, it voted on September 28, 2007, to "extend county road at Wicker Hollow 3 hundredths of a mile to Harold Roark's property and the gate to be taken down." The following month, the Marcums filed a second complaint in Carter Circuit Court. Several motions and briefs were filed in the two proceedings, which apparently resulted in some confusion of the issues. Ultimately, the court treated the matters as having been consolidated, and on June 18, 2010, it rendered an Order Affirming Determination of the Fiscal Court from which the instant appeal is taken. In that

order, the court noted that the evidence was conflicting as to whether Wicker Hollow Road was approximately 1.0 miles in length and terminating at the Marcums' gate, or 1.4 miles in length and therefore extending past the gate. Applying *Trimble, supra*, the court determined that because substantial evidence was found in the record in support of the Fiscal Court's decision, that decision must be upheld. This appeal followed.

The Marcums now argue that the circuit court erred in affirming the Fiscal Court's decision. They maintain that while there is some evidence in the record supporting the conclusion that Wicker Hollow Road is 1.4 miles in length, the weight of the evidence requires a conclusion that the road is 1.0 miles in length. They contend that when the road first appeared in the public record in 1978, its length was shown as 1.0 miles. They also point to evidence that when the road was measured using global positioning satellites (GPS) in 2002, its length was also found to be 1.0 miles. They go on to note that subsequent to 1978 when the road was created, there are no Fiscal Court minutes extending the length of the road. In sum, the Marcums argue that they met their burden under *Trimble* of demonstrating before the circuit court that the Fiscal Court decision was arbitrary and therefore must be reversed.

Trimble provides in relevant part that a decision of a fiscal court must be upheld on appeal if the circuit court determines that the decision was supported by substantial evidence. *Trimble, supra*. On review of a decision of a fiscal court, the circuit court may not hear testimony and make independent Findings of Fact

and Conclusions of Law. *Id.* Rather, the court must determine whether substantial evidence exists in the record sufficient to support the conclusion that the decision was not arbitrary. If that question is answered in the affirmative, the decision must be affirmed. *Id.* This is true even if evidence exists in the record sufficient to support the position advocated by the appellant. *Id.*

The question before the circuit court, then, was whether substantial evidence was presented to the Fiscal Court sufficient to support a determination that Wicker Hollow Road is 1.4 miles in length. In examining this question, the circuit court found that E911 Director Tommy Thompson testified before the Fiscal Court that a 2001 County Road Map illustrated Wicker Hollow Road as being 1.4 miles in length as measured from the center of US 60.¹ Thompson also referred to a 1994 Road Series Map that showed the length of the road to be 1.4 miles. When appearing a second time as a witness, Thompson made reference to a “quad” map dated November 7, 1994, which showed the length of Wicker Hollow Road to be 1.4 miles. The circuit court noted that without the benefit of the physical exhibits, it was unclear whether the 1994 Road Series Map and the “quad” map were the same or different maps. Either way, Thompson relied on at least one county map in support of his testimony that Wicker Hollow Road is 1.4 miles in length. Other witnesses offered testimony that the road extended beyond the Marcums’ gate. And as found by the circuit court, several witnesses recalled

¹ Though not addressed in the record, “E911” may be a designation of Carter County’s “Emergency 911” system.

“long-standing travel along the roadway beyond the gate,” and more than one witness testified as to a bus line travelling on the road.

The question for our consideration is whether this evidence constitutes substantial evidence for the purpose of concluding that the Fiscal Court decision was not arbitrary. Substantial evidence is such evidence as would induce conviction in the minds of reasonable men. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998).

We must conclude that the testimony of E911 Director Thompson, his reliance on a map or maps of public record, and the testimony of witnesses who stated that Wicker Hollow Road extended past the Marcums’ gate constitute substantial evidence for the purpose of concluding the Fiscal Court decision was not arbitrary. As such, we find no error in the circuit court’s determination that the Fiscal Court decision was supported by substantial evidence.

For the foregoing reasons, we affirm the Carter Circuit Court’s Order Affirming Determination of the Fiscal Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

MaLenda S. Haynes
Grayson, Kentucky

BRIEF FOR APPELLEE:

No Brief Filed